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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,330	10/16/2003	William Edward Windham		8503

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EXAMINER

YIP, WINNIE S

ART UNIT PAPER NUMBER

3637

DATE MAILED: 08/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/687,330

Applicant(s)

WINDHAM, WILLIAM EDWARD

Examiner

Winnie Yip

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date February 4, 2004.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

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DETAILED ACTION

This is a first office action for application Serial No. 10/687,330 filed October 16, 2003.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: what is the subject matter (who or what element) providing the step of "standing on the flap and manually gripping the sheath to hold the first and last rods up..".

3. Claims 2-4 and 5-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In these claims, the recited feature of "the sheath" lacks a proper antecedent basis which causes the claims in definite.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Drago (US Patent No. 2,847,017) in view of Smith (US Patent 3,709,237).

Drago shows and teaches a portable dressing blind comprising: an enclosure of flexible or fabric material having four generally vertical sides (6, 48, 10), a top side (14), each vertical sides having an top edge and a lower edge, a continuous sleeve (28) sewn around and along each top edge of the four sides, the sleeve (28) having two opening ends, a generally rigid rod (34) having approximately a length of the top edge and being inserted into and extending across each corresponding sleeve, the rods (34) being held up in a space apart from a surface to be stood such as a ground such that the flexible or fabric material of each sides is dropped down to form the vertical sides respectively, wherein at least two opposite vertical sides being substantially parallel each other when the blind is held in a vertical orientation, and at lest one other vertical sides (10) forms an entrance (12) of the enclosure. Drago fails to define the blind further comprising a flap extending at least 6 inches from the bottom edge of the at least one vertical side which defines the an entrance of the enclosure as claimed. Smith teaches a portable blind comprising a plurality of vertical sides (18) each having a flap (28) extending suitable inches from a bottom edge of the vertical side for sufficiently securing the vertical side over a supported surface such as over the ground. It would have been obvious to one ordinary skill in the art, at the time the invention was made, to modify the portable dressing blind of Drago having at least one flap extending from the bottom edge of at least one of the vertical side as taught by Smith and the flap of Smith would be equal well to create optimal dimensions such as at least 6 inches as claimed for a length of the flap for providing an area being sufficiently stood thereon for holding down the blind in a vertical orientation since it has been held that discovering

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an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617F.2d272,205 USPQ 215(CCPA 1980).

6. Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent No. 10-238169 in view of McElroy (US Patent No. 3,397,710).

Japanese reference shows and teaches a portable dressing blind comprising: an enclosure of flexible or fabric material having four generally vertical sides, each vertical sides having an top edge, a continuous sleeve sewn around and along each top edge of the four sides, a generally rigid rod (3) being inserted into and extending across the sleeve, the rods (3) being held upward spaced apart from a surface to be stood such as a ground such that the flexible or fabric material of each sides is dropped down to form the vertical sides respectively, a lower end of the vertical side having a flap (5) for holding the vertical side in a vertical orientation, wherein at least two opposite vertical sides are substantially parallel each other when the blind is held in a vertical orientation without any vertical support poles, and at lest one other vertical sides (2) forms an entrance (7) of the enclosure. The Japanese Patent fails to define the flap (5) being extended at least 6 inches from the bottom edge of the at least one vertical side which defines the entrance of the enclosure as claimed. However, it would have been obvious to one ordinary skill in the art, at the time the invention was made, to modify the portable dressing blind of the Japanese Patent '169 having the flaps formed to have a specific length of at least 6 inches as claimed, since the applicant has not disclosed that the specific dimension of the flap solves any stated problem or is for any particular purpose and it appears that the claimed invention would perform equally well with the flap formed to have at least 6 inches for provides sufficient space to allow a person

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capable stands thereon. Notice, to create optimal dimensions for a length of the flap, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617F.2d272,205 USPQ 215(CCPA 1980).

Further, Japanese reference does not define the sleeve of each sides of the dressing blind having two open ends such that the rod having sections being inserted into the respective sleeve as claimed. McElroy teaches a portable blind comprising an enclosure of flexible material having four vertical sides (12), each side having a sleeve (20) formed on an top edge of the vertical sides, the sleeve having two open ends (25), and rods (22) each inserted into a corresponding sleeve for providing a rigidity support to hold the enclosure in a vertical orientation, and the end of rod may have a sheath (24) for protecting the end of the rod. It would have been obvious to one ordinary skill in the art, at the time the invention was made, to modify the dressing blind of Japanese Patent having the sleeve on the top edge of each vertical side having open ends for insertion of the rods as taught by McElroy for providing the blind being easily assembled or disassembled.

Notice, the phrase "whereby ..." in structural claim 5 merely states the result of the method of using in the claim adds nothings to the patentability of the structure claim since the Japanese reference is capable used by a person with a same step.

Allowable Subject Matter

7. Claim 1 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

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8. Claims 3-4 and 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Reasons For Indicating Allowance

9. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record, whether taken individually or in combination, does not reveal or render obvious a method of using a portable dressing blind comprising steps of a person standing on the flap and gripping sheaths at the end of rods, holding two side rods upward, apart, and parallel for holding the enclosure in a vertical orientation without using any vertical support poles.

Citations

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Japanese Patent No. 210267, Smith '237 teach various portable blinds having an enclosure having a flap formed on a lower edge of sides of the enclosure for sealing and holding down the sides when the enclosure is disposed in the vertical orientation. Carson '244, Franklin '330, Mrant '218, Cananzey '836 teach various portable blinds having an enclosure of flexible material being held in a vertical orientation without vertical poles as similar to the claimed invention.

Inquiry Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 703-308-2491. The examiner can normally be reached on M-F (9:30-6:30), Second Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Winnie Yip
Primary Examiner
Art Unit 3637

wsy
July 29, 2004